

MHAU100003492016



RCS No. 27/2016  
Sk. Rafeeq and Ors. V/s.  
Shaikh Gulab and Ors.

**Order below Exh.19**

This application is filed on behalf of plaintiffs under Order 6 Rule 17 of C.P.C. for amendment of plaint. The present suit is for recovery of encroached area of 27 R. of land Gut No.421 adm. situated at Takli (Rajarai), Tal. Khultabad, Dist. Aurangabad (hereinafter referred as “Suit property”)

2. According to plaintiffs during pendency of suit court commissioner was appointed for measurement of suit land and accordingly measurement carried out. T.I.L.R. Kannad submitted map and panchanama wherein it is mentioned that defendant No.1 to 4 and 6 and 8 have encroached upon 17 R. land of Gut No.421. Therefore, plaintiffs wants to delete defendant No. 5, 7 and 9 and change defendant No. 6 and 8 as defendant No.5 and 6. In claim clause, in para No.8 and prayer clause “B” plaintiffs want to strike off figure “**27 R.**” and want to add “**17 R.**”

3. In paragraph 8 line No.10 after word “civil Court” plaintiffs want to add “ during pendency, the suit land was measured on 04-06-2019 in which it transpired that defendants No. 1 to 4, 6 and 8 have encroached upon and are in illegal possession of 17 R. from out of the suit land”.

4. Defendants opposed application by filing their say below

Exh.19. It is contended by defendants that, report submitted by cadastral surveyor is not admitted to the defendants. Therefor, subsequent amendment on the basis of report is not maintainable. In absence of division, measurement cannot be carried. The amendment sought will change the nature of suit property. Lastly defendants prayed to reject the application.

5. Following points arise for my determination and I gave my findings thereon for the reasons stated as follow:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1]	Whether the proposed amendment is necessary for the purpose of determining the real questions in the controversy ?	Yes
2]	What order ?	As per final order.

### **REASONS**

#### **Point Nos. 1 and 2 :**

6. Perused application, plaint, written statement and documents on record. Heard both the learned advocates.

7. On going through record it appears that present suit is for recovery of encroached portion of suit land. During pendency of suit court commissioner was appointed for measurement of suit land and accordingly measurement carried out. In view of said measurement map plaintiffs now wants to delete defendant No. 5, 7 and 9 and change defendant No. 6 and 8 as defendant No.5 and 6. Plaintiffs is sole master of his suit and he can delete any defendant from suit. After deleting any defendant number of subsequent defendant can be changed. Even amendment in area of encroached portion would not change nature of

suit.

8. The hearing of suit is yet not started and both parties have ample opportunity to put their case. The amendment sought by plaintiffs is necessary for proper adjudication of suit and to determine the rival claims of the parties. It would not change nature of suit nor it would prejudice to defendants. The valuable rights of both parties are involved in the suit. Hence, to avoid multiplicity of proceedings and to determine rights of party properly, amendment application needs to be allowed. Defendants can be compensated for delay and inconvenience caused to them. Thus, keeping in mind the object of awarding the cost viz. "Compensate and not to punish" the application deserves to be allowed subject to cost of Rs.300/- to be paid to defendants.

9. Considering the facts and circumstances of present suit and discussion as above, application of plaintiffs deserve to be granted. Hence, I answer point No. 1 in the affirmative and in the result of point No. 2, I pass following order.

### **ORDER**

1. Application is allowed subject to cost of Rs.300/- be paid to the defendants.
2. After payment of cost, plaintiffs to carryout amendment as sought in application and file amendment plaint within 14 days.

Date : 04/02/2020

( G.R.Tiwari )  
Civil Judge (J.D.),  
Khulatabad.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer : Shri Akash S. Chavan  
Court : C.J.J.D & J.M.F.C. Khultabad  
Date : 04/02/2020  
Order signed by the presiding officer on : 04/02/2020  
Order uploaded on : 10/02/2020